FILE COPY

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1945

NO. 234

MISSISSIPPI PUBLISHING CORPORATION,

Petitioner

VS.

DENNIS MURPHREE,

Respondent

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

The respondent respectfully submits that this Honorable Court should not entertain the petition for the issuance of a writ of certiorari in this cause for the following reasons:

I.

The Circuit Court of Appeals has correctly decided all questions presented by this case in accord with applicable decisions of this court.

II.

Petitioner's point No. I is not well taken in that the Circuit Court of Appeals in this case has not decided important questions of federal law not heretofore settled by this court; but on the contrary its decision is in accord with the applicable decisions of this court.

III.

Petitioner's point No. II is not well taken in that the decision of the Circuit Court of Appeals in this case is not contrary to but rather is in accord with applicable decisions of this court construing sections 112 and 113 U. S. C. A. Title 28. (Judicial Code Secs. 51 and 52).

IV.

Petitioner's point No. III is not well taken in that, thereby petitioner merely seeks to have this court review the evidence and overturn a finding of fact made by the District Court.

ADDENDA TO PETITIONER'S STATEMENT OF MATTERS INVOLVED.

1. The respondent, a citizen of the Northern District of Mississippi, filed his suit in the District Court thereof against the petitioner, a foreign corporation. (R. pp. 43-44).

2. Petitioner was doing business in the Southern District of Mississippi where its principal office in the state was located. It has been duly admitted to carry on business in the State of Mississippi, and as a condition precedent thereto, in accordance with the laws of the state, had appointed a citizen of the Southern District of Mississippi, as its agent for service of process. (R. pp. 28-29).

3. The cause of action sued on arose in the Southern District of Mississippi. (R. p. 44).

4. Jurisdiction of the Federal Court was founded only on the fact that the suit was between citizens of different states. (R. p. 3).

5. Jurisdiction of the person of the petitioner was had through process issued by the Clerk of the Northern District, and by the Marshal of the Southern District personally served upon petitioner's agent for the service of process, all pursuant to rule 4, section (f) Federal Rules of Civil Procedure. (R. pp. 7 and 44).

6. The District Court held that there was not proper venue in the Northern District, giving as its reason therefor the following:

> "As I read the opinion of the Supreme Court of the United States in **Neirbo Co. vs. Bethlehem Corporation** — 308 U. S. 167 — what the court holds is in substance that for purposes of jurisdiction the court will still recognize the legal fiction of citizenship of a corporation in the state of its incorporation; but that for purposes of venue it will adopt the practical and realistic view that such corporations are domiciled in any District where they do business and have in accordance with the mandates of state law appointed agents for the service of process.
>
> "If this be the correct view of the holding in the Neirbo case it follows that under Section No. 113 of the Judicial Code the defendant in this case, is in that limited sense, an inhabitant of the State of Mississippi, and entitled to be sued in the District of the state where it resides.
>
> "It follows that there is not proper venue in the Northern District of Mississippi and the motion to dismiss for want of venue is sustained." (R. p. 44).

7. The Circuit Court of Appeals in reversing

the case held that venue was properly laid because jurisdiction was founded only on the fact that the action was between citizens of different states and the suit was filed in the district of the residence of the plaintiff, and further because by the appointment of an agent for the service of process, in accordance with the laws of the State of Mississippi, the petitioner affirmatively consented to be sued in any of the courts of the State of Mississippi, including the Federal Court. The Circuit Court of Appeals further held that jurisdiction of the person of the defendant was acquired pursuant to the process issued and served under Rule (f) of the Rules of Civil Procedure, and that by such service of process neither the venue nor the jurisdiction of the court was extended. 149 Fed. (2d) 139.

ARGUMENT.

I.

The Circuit Court of Appeals has correctly decided all questions presented by this case in accord with applicable decisions of this court.

1. Prior to 1887, the general venue statute provided that no civil suit could be brought against any person "in any other district than that whereof he is an inhabitant, or in which he shall be found." The Act of 1887 omitted the words "in which he shall be found," and added the presently existing provis-

ion (28 U. S. C. A. Sec. 112) that where jurisdiction is founded solely on diversity of citizenship "suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

Since the 1887 amendment was adopted we have found no case wherein the court has held that venue was improper in diversity of citizenship cases, where suit was brought against a corporate defendant in the district of which the plaintiff was a citizen. The Neirbo case does not hold to the contrary, but in effect recognizes that no valid question could have been raised had the suit been brought in the district of the residence of the plaintiff; the first paragraph of the opinion in that case containing this sentence: "The suit was based on diversity of citizenship and was not brought 'in the District of the residence of either the plaintiff or the defendant.'" The lower court, in that case expressly held, and as shown above, the holding to that extent was not disturbed by the Supreme Court that ". . . had plaintiffs been residents of the Southern District of New York, so that venue was properly laid, service of process upon the defendant would have been had by service upon its agent." **(Neirbo v. Bethlehem Shipbuilding Co.,** 103 Fed. (2d) 765-770).

Some of the many cases holding that venue is properly laid in diversity cases where the suit is filed in the district of the plaintiff's residence, and none of which are disturbed by the Neirbo case, are: **McCormick v. Walthers,** 134 U. S. 41, 33 L. Ed. 833;

Munter v. Weil Corset Co., 261 U. S. 276, 43 S. Ct. 347, 67 L. Ed. 652; **Seaboard Rice Milling Co. v. C. R. I. & P. R. R. Co.,** 270 U. S. 363, 70 L. Ed. 633; **Mass. Bonding & Insurance Co. v. Concrete Steel Bridge Co.,** 37 Fed. (2d) 696 (Fourth Circuit); **Williams v. James,** 34 Fed. Supp. 61 (D. C. La. 1940); **Coastal Club v. Shell Oil Co.,** 45 Fed. Supp. 859 (D. C. La. 1942); **Andrews v. Joseph Cohen & Sons,** 45 Fed. Supp. 732, (D. C. Texas 1941); **Richard v. Franklin County Distilling Co.,** 38 Fed. Supp. 513 (D. C. Ky. 1941).

2. Since Chief Justice Marshall rendered the opinion in **Gracie v. Palmer,** 8 Wheat. 699, L. Ed. 719, it has been consistently held by the Federal Courts that the provisions of the general venue statute fixing the place where suits shall be brought, does no more than accord to the defendant a personal privilege respecting the venue, or place of suit, which he may assert or waive at his election. (See Neirbo case, supra, and discussion of the cases in Mr. Justice Frankfurter's opinion.)—

After the amendment in 1887, as the same was construed by the Supreme Court in **Shaw v. Quincy Mining Co.** 145 U. S. 444, 36 L. Ed. 768, and in **Southern P. Co. v. Denton,** 146 U. S. 202, 36 L. Ed. 942, it was generally held that a corporation, by its act in appointing an agent for service of process, could not be held to have waived its right to be sued only in the district of which it was an inhabitant or in the district of which the plaintiff was a resi-

dent; and, therefore, over its objection, it could not be subjected to suit in a Federal Court in any other district in which it did business or had appointed an agent for the service of process. This was the rule in effect in the Fifth Circuit as announced in the case of **McLean v. Mississippi**, 96 Fed. (2d) 741, 119 A. L. R. 670.

So, prior to the decision in the Neirbo case, a foreign corporation such as the petitioner here, doing business in the Southern District of Mississippi, and having an agent for the service of process there, could not, over its objection, be sued in that district, unless the plaintiff likewise lived in that district; but it could be sued in the Northern District if the plaintiff lived there and process could be had, or it could be sued in the Federal Court of the District in the state where its home office was located.

The Neirbo case does not attempt to restrict, but rather its effect, through a liberalization and broadening of the legal concept of waiver, is to enlarge the provisions of the general venue statute, so that now a foreign corporation doing business in a state which has appointed an agent for service of process there, can be sued in the Federal Courts in that state, and this even though the plaintiff not be a resident of that state. The rationale of that opinion simply is that by the appointment of an agent for the service of process in a state in which a foreign corporation is doing business, in accordance with the laws of that state, the corporation thereby waives

the provisions of the venue statute, which it otherwise would be entitled to assert, and affirmatively consents to be sued in that state,—not only in the State courts, but in the Federal Courts sitting therein.

If the Neirbo case be construed to accord with the ruling of the District Court, and in accord with petitioner's contention, then it would mean that a foreign corporation, by waiving a privilege and consenting to be sued in one district, thereby acquired a right, theretofore not had by it, namely, not to be sued elsewhere, even in the district of which plaintiff was a resident. No such meaning can be derived from that opinion.

3. The ruling of the District Court was anchored on the proposition that the Neirbo case required adoption of the practical and realistic view, that for purposes of venue, foreign corporations "are domiciled in any district where they do business and have, in accordance with the mandate of state law, appointed agents for the service of process," and, therefore, the defendant within the meaning of Sec. 52 Judicial Code (28 U. S. C. A. Sec. 113) was "an inhabitant of the State of Mississippi and entitled to be sued in the District of the State where it resides." (R. p. 44). But it is well recognized and long established law that the word "inhabitant" and "resident" as the same are used in Secs. 112 and 113 are synonymous with the word "citizen" and all include the idea of domicile. A corporation is not

and cannot be a citizen, inhabitant, or resident of a state in which it has not been incorporated. **Shaw v. Quincy Mining Co.**, 145 U. S. 444, 36 L. Ed. 768; **Galveston H. & S. A. Railway Co. v. Gonzales**, 151 U. S. 496, 38 L. Ed. 248; In re: **Keasbey M. Co.**, 160 U. S. 221, 40 L. Ed. 402; **Seaboard Rice Milling Co., v. Chicago R. I. & P. R. R. Co.**, 270 U. S. 363,L. Ed. 633.

As we have previously undertaken to show, the Neirbo case does no more than hold that in diversity of citizenship cases the privilege accorded the defendant, under the general venue statute (28 U. S. C. A. Sec. 112) of being sued only in the district of the residence of either the plaintiff or the defendant may be waived, and is waived where it does business in some other state and appoints there an agent for the service of process. The opinion in that case does not disturb the well established principle set forth in the cases cited above that within the meaning of the venue statutes residence, habitation and domicile are synonymous in their meaning. Instead of disturbing those principles, the Neirbo case, impliedly at least, recognizes their validity; and even those members of the court who constituted the minority did not understand the main opinion to hold otherwise. Thus, in his dissenting opinion, Mr. Justice Roberts at page 176 said:

> "Whatever may be said in support of the original adoption of a different ruling, it has been the law for a century that as respects the

jurisdiction of the Federal Courts over a corporation in diversity of citizenship cases, the corporation is a citizen and resident of the state of incorporation and no other state. I do not understand the court's opinion to repudiate the rule."

Since, therefore, the petitioner is not a resident of Mississippi, but of Delaware, the venue is fixed by Section 51 of the Judicial Code (28 U. S. C. A. Sec. 112), and Section 52 Judicial Code (28 U. S. C. A. Sec. 113) can have no application.

4. The Mississippi Statute (Sec. 5319 Code 1942) provides that every foreign corporation doing business in the state shall appoint a resident agent upon whom service of process may be had in any suit against the corporation. (See Appendix A for text of the statute). It was in obedience to the mandate of this statute that defendant appointed its resident agent for the service of process.

The Supreme Court of Mississippi has construed this statute as making the agent thus appointed, regardless of his actual residence or domicile, an agent for the service of process in any suit brought against the corporation in any county of the state, so that process may issue from the county in which the suit is brought, be served upon the resident agent in the county of his residence, and thereby the court obtains jurisdiction over the person of the defendant corporation. In other words, so far as the effective-

ness of service of process is concerned the residence of the agent in contemplation of law, is in every county in the state. **Sanford v. Dixie Const. Co.,** 157 Miss. 627, 128 So. 887.

In the Sanford case suit was filed in Forrest County and process served on the resident agent of the defendant foreign corporation in Harrison County where the agent resided, and there it was held that the Circuit Court of Forrest County had jurisdiction of the suit and of the person of the defendant. In construing the statute the court remarked that where, pursuant to its provisions a foreign corporation has duly designated a resident agent, "process may be served in the same way and as easily and as certainly and with as full and complete effect as upon a like agent of a domestic corporation;" (Opinion p. 632) and the court then held that by this statute "it was the intention and it has the effect when a foreign private corporation has complied with it, to place the foreign private corporation in regard to venue in transitory actions in exactly the same attitude as a domestic corporation, and that its effect is to domesticate the said foreign private corporation for the purposes of suit and process—although for that purpose only." (Op. pp. 634-635).

And, accordingly, the Supreme Court of Mississippi in a later case held, that venue being properly laid in accordance with the State Statute, service of process on the resident agent of the foreign

corporation in the county of his residence is valid, and the court acquires jurisdiction both of the subject matter and of the person of the defendant, even though the cause of action arose outside of the State of Mississippi. **Tri-State Transit Co. v. Mundy**, 194 Miss. 714, 12 So. (2d) 920.

The contract thus made between petitioner and the State of Mississippi, whereby it appointed a process agent, and in consideration of the protection given it by the state, consented to be sued therein, was a real contract, and the consent thus given extended to any court sitting in the state which applies the laws of the state, which included the District Court of the United States for the Northern District of Mississippi. **Neirbo Co. v. Bethlehem Shipbuilding Corp.**, 308 U. S. 165, 84 L. Ed. 167; **Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.**, 309 U. S. 4, 84 L. Ed. 537; **Mass. Bonding & Ins. Co. v. Concrete Steel Bridge Co.**, 37 Fed. (2d) 695 (Fourth Circuit); **Coastal Club v. Shell Oil Co.**, 45 Fed. Supp. 859; (D. C. La. 1942); **Barnes v. Wilson**, 40 Fed. Supp. 689 (D. C. Wis. 1941); **Williams v. James, etc.**, 34 Fed. Supp. 61 (D. C. La. 1940).

5. Process was issued by the Clerk of the Northern District, directed to the marshal of the Southern District, and by him served upon H. V. Watkins, Jr., a resident of the Southern District, who pursuant to provisions of the Mississippi law had been appointed agent of the petitioner for receiving service of process. The issuance and service

of process was regular in every respect, and the court thereby acquired jurisdiction of the person of the petitioner. Federal Rules of Civil Procedure, Rule 4 (f); Mississippi Code 1942 Sec. 5319; **Schwarz v. Artcraft Silk Hosiery Mill,** 110 Fed. (2d) 465 (Second Circuit); **O'Leary v. Lofton,** 3 F. R. D. 36 (D. C. N. Y. 1942; **Williams v. James,** 34 Fed. Supp. 61 (D. C. La. 1940); **Coastal Club v. Shell Oil Co.,** 45 Fed. Supp. 859 (D. C. La. 1942); Hughes Federal Practice & Procedure Vol. 17, Sec. 18,992.

By this method of serving process upon the petitioner neither the jurisdiction nor the venue of the court was extended or enlarged. When petitioner qualified to do business in the State of Mississippi, and pursuant to the laws of the State, appointed a resident agent for the service of process, it thereby consented to be sued in any of the courts sitting in the state which applied the laws of the state, and this included the United States District Court for the Northern District of Mississippi. By its act in so appointing a resident agent for the service of process pursuant to the laws of the State, the foreign corporation thereby, for the purpose of suit and process, became domesticated, and subject to suit in the same manner as any domestic corporation, and process could be served upon it in the same manner as upon any such domestic corporation. The residence of the agent in contemplation of law was in every county in thet state, so that venue being present, suit could be filed in any county of the state and process issue from the proper court sitting

therein, and be served upon the agent of the corporation at his residence wherever in the state it might be.

So there is presented here no matter of extending or enlarging the jurisdiction or venue of the court, but purely a procedural matter, whereby pursuant to Rule 4 (f) process was served upon petitioner's agent, and its person brought before the court.

II.

In their brief counsel have grouped and argued together under point I thereof, their stated reasons numbered II, III, VI and VII as set forth in the petition. We will follow the order thus established.

A. It is said that the decision of the Circuit Court of Appeals in this case grows out of a misunderstanding of **Neirbo Co. v. Bethlehem Shipbuilding Corp.**, 308 U. S. 356, 84 L. Ed 167, 128 A. L. R. 1847 and of **Oklahoma Packing Co. v. Oklahoma Gas and Electric Co.**, 309 U. S. 4, 84 L. Ed. 537. It is said that in the Neirbo case, "this court held that by the appointment of an agent for the service of process the defendant has consented to be sued in the Federal Courts of New York in the District where it was engaged in business and maintained its principal office and place of business." (Brief p. 14). It so happened that the suit was brought in the District Court where the defendant maintained its principal

office, but that fact in no wise influenced the court in its decision. Its holding was that by appointing an agent for the service of process in accordance with the laws of New York, Bethlehem waived the privilege conferred by Section 51 of the Judicial Code, and consented to be sued in "any Court sitting in the State which applies the laws of the state." (Opinion p. 171).

It is said by counsel for petitioner that in the Neirbo case "the court held that for practical purposes of venue the Bethlehem was a resident and inhabitant of the Southern District of New York," (Brief p. 15); and in discussing **Ex Parte Schollenberger,** 96 U. S. 369, 24 L. Ed. 853, it is said that "the court held that such insurance company for purposes of venue became an inhabitant of the District in which it carried on business," (Brief p. 15); and in discussing **B. & O. Railroad Co. v. Harris,** 12 Wall. 65, 20 L. Ed. 354, it is said that "this court held that such foreign corporation was an inhabitant of the particular district in which it was engaged in business." (Brief p. 15). In each of these statements counsel are mistaken as to the holdings of the court. A reading of those cases will show that none of them held that for the purposes of venue the foreign corporation became an inhabitant of the district in which it carried on business; but each of them did hold that by reason of the facts set forth therein, the foreign corporation consented to be sued in the courts sitting in the particular state.

We agree that the construction placed by the Supreme Court of Mississippi upon Section 5319 Mississippi Code of 1942, providing for the appointment by foreign corporations doing business in the State of a resident agent for service of process, is binding upon the Federal Courts. We have already discussed this section of the Mississippi Code, and have shown what construction has been placed upon it by the Supreme Court of Mississippi. (Supra pp. 10-12). In brief, that construction is that for purposes of process and suit the foreign corporation becomes domesticated, so that if venue be properly laid, service of process on the resident agent is valid and effective to bring into Court the person of the defendant, regardless of where the suit is brought, or where the resident agent lives. **Sanford v. Dixie Const. Co.**, 157 Miss, 627, 128 So. 887; **Tri-State Transit Co. v. Mundy**, 194 Miss. 12 So. (2d) 920.

Foreman v. Mississippi Publishers Corp. 195 Miss. 90, 14 So. (2d) 344 cited by petitioner does not hold to the contrary. No question was raised there as to the validity of the process, and all parties apparently conceded it to be valid. The question in that case was one of venue under the state statute, and the court held that venue was absent in the particular county where suit was brought. But it is elementary that the state statute governs the venue of actions in the State courts and the Federal Statute governs the venue of actions in the Federal Courts.

B. & C. It is urged that by its decision the Circuit Court of Appeals has so construed Rule 4 (f) Federal Rules of Civil Procedure as to enlarge the jurisdiction and venue of the District Court for the Northern District of Mississippi. It may be conceded that no rule of court can operate to enlarge or abridge the jurisdiction or the venue of Federal Courts, but it is obvious that such has not been done by the application of Rule 4(f) to the facts in this case. The District Court held that such was not done by the service of process on petitioner (R. p. 44); and the Circuit Court of Appeals held the same (149 F. (2d) 138). Here the general jurisdiction of the District Court is present because of diversity of citizenship as provided by 28 U. S. C. A. Section 41 (b), and venue is grounded upon the bringing of the suit in the district of which the plaintiff is a citizen, as provided by 28 U. S. C. A. Section 112(a). Therefore, any argument that the jurisdiction or venue of the court has been extended stems from the fact that the foreign corporation had no office or agent, and did no business in the Northern District of Mississippi, so that process had to be served upon the agent of the company who resided in the Southern District. There is presented, therefore. a question of jurisdiction of the person rather than jurisdiction of the subject matter, and since the only question as to jurisdiction of the person is whether the process may be served outside of the district where suit was brought, that question is purely one of procedure. In the preceding pages of this brief,

we have discussed that point (Brief pp. 12-14), and we will not further elaborate on it.

To support their contention however, counsel cite numerous cases, but a great majority of those cited do not even remotely touch the point involved, and these cases we will not discuss.

Contracting Division A. C. Horne Corp. v. New York Life Insurance Co., 113 Fed. (2d) 864 (Petitioner's Brief p. 17) presented a question of venue in a patent case. There is a special statute covering the venue in such cases, and the court merely held that since the suit was not brought in accordance with that statute it should be dismissed.

Sewchulis v. Lehigh Valley Coal Co. 233 Fed. 422 and **Keller v. American Sales Book Co.**, 16 Fed. Supp. 189 were both decided prior to the adoption of the Federal Rules of Civil Procedure. They each held that process could not run beyond the boundaries of the district in which the suit was filed, and this undoubtedly was the law prior to the adoption of the Rules. The purpose of Rule 4(f) was to correct the evils that arose by virtue of that situation.

Melekov v. Collins, 30 Fed. Supp. 159 and **Carby v. Greco**, 31 Fed. Supp. 251, each held that a summons served on a defendant in a district of the state other than that in which the suit was filed, was notwithstanding Rule 4(f), inoperative, and gave the court no jurisdiction over the person of the defendant. These cases are contrary to the weight of authority

(See brief page 13 supra); but regardless of this it is also apparent that the factual situation in each of those two cases was quite different from that in the present case. In the Melekov case, the suit was filed in the Southern District of California against Melekov, a citizen of Oklahoma, who was found and served with process in the Northern District of California. In the Carby case, suit was filed in the Western District of Kentucky against Greco, a citizen of Alabama, and service of process was had upon the Secretary of State of Kentucky in the Eastern District of the State, Kentucky having a statute to the effect that any non-resident who operates a motor vehicle within the state shall thereby constitute the Secretary of State as his agent for the service of process in any civil suit arising out of the operation of the motor vehicle. Thus, in each of those cases the defendant was an individual, while in the case at bar petitioner is a corporation duly qualified to do business in Mississippi, which for purposes of suit and process has been domesticated therein, and has consented to be sued therein.

In **Sibbich v. Wilson & Co.**, 312 U. S. 1, 85 L. Ed. 479 the court had under consideration the validity of Rules 35 and 37 Rules of Civil Procedure, which provided for the physical and mental examination of persons. In upholding these rules the court said:

> "Congress has undoubted power to regulate the practice and procedure of federal courts, and may exercise that power by delegating to this or

other federal courts authority to make rules not inconsistent with the statutes or Constitution of the United States; but it has never essayed to declare the substantive state law, or to abolish or nullify a right recognized by the substantive law of the state where the cause of action arose." . . . (Op. p. 10).

. . . . . .

"In the instant case we have a rule which, if within the power delegated to this court, has the force of a federal statute." . . . (Op. p. 13).

. . . . . .

"The test must be whether a rule really regulates procedure, — the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them. That the rules in question are such is admitted." (Op. p. 14).

. . . . . .

"The value of the reservation of the power to examine proposed rules, laws and regulations before they become effective is well understood by Congress. It is frequently, as here, employed to make sure that the action under the delegation squares with the Congressional purpose. Evidently the Congress felt the rule was within the ambit of the statute as no effort was made to eliminate it from the proposed body of rules, although this specific rule was attacked and de-

fended before the committee of the two Houses. The Preliminary Draft of the rules called attention to the contrary practice indicated by the Bostford Case, as did the Report of the Advisory Committee and the Notes prepared by the Committee to accompany the final version of the rules. That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found. We conclude that the rules under attack are within the authority granted." (Op. pp. 14-15).

What this court said in the Sibbach case regarding Rules 35 and 37 is equally as applicable to Rule 4(f). The Advisory Committee considered the rule to be procedural, and not to extend nor enlarge the jurisdiction or venue of the District Courts; but nevertheless the point was expressely called to the attention of this court, and the rule was thereafter promulgated.

In fact, it may be noted that petitioner does not question the power of the Supreme Court to promulgate Rule 4(f) nor its validity as written. Thus, in the brief, pages 22-23, it is recognized that if jurisdiction is present, and venue is properly laid in one district, Rule 4(f) becomes effective to send process to some other district for service upon the resident agent; counsel saying that "it is not a matter of substance but a matter of procedure as to where process might be served." So the argument of petitioner always returns to the proposition that

venue was improperly laid in the Northern District.

III.

Under point II of their brief counsel have grouped and argued together their stated reasons I and VIII as set forth in the petition. In its last analysis the argument is that for purposes of jurisdiction and venue petitioner was an inhabitant of the Southern District of Mississippi, and therefore under Section 52 of the Judicial Code could be subjected to suit only in that district.

We agree with the statement in the brief (p. 24) that within the meaning of the statutes fixing federal jurisdiction and venue the words "inhabitant" and "resident" are synonymous. But counsel overlook the fact that the authorities are also unanimous in holding that petitioner is not and cannot be an inhabitant or resident of any state except that in which it was incorporated, i.e., an inhabitant of the State of Delaware; and as we have previously indicated herein this principle was not disturbed by the Neirbo case (supra. pp. 9-10). This would seem to dispose of petitioner's point II, but we will nevertheless notice the cases cited. Most of them (brief pp. 25-26) announce the principle that a foreign corporation is not subject to suit in a state in which it does no business and has no agent for the service of process. But none of those authorities are applicable for the obvious reason that in this case the petitioner is doing business in Mississippi, and has duly quali-

fied under the state statute, which as construed by the Supreme Court of Mississippi, has the effect of domesticating petitioner for purposes of suit and process; and by so qualifying under the laws of the state petitioner, under the principle announced in the Neirbo case, waived the venue provisions of the federal statute, which it otherwise would have been entitled to assert, and affirmatively consented to be sued in any of the courts sitting in the state, which applied the laws of the state.

The cases of **Robertson v. Railway Labor Board,** 286 U. S. 619, 69 L. Ed. 1119; **Harkness v. Hyde,** 98 U. S. 476, 25 L. Ed. 237; **Employers Reinsurance Corp. v. Bryant,** 299 U. S. 374, 81 L. Ed. 289; **McCall Co. v. Bladsworth,** 290 Fed. 365, and **Sewchulis v. Lehigh Valley Coal Co.,** 233 Fed. 422 all dealt with the matter of the validity of process served outside of the district in which the suit was brought. In the Robertson and McCall Co. cases process was served outside of the state; in the Harkness case process was served outside of the boundaries of the territory, and in the Bryant and Sewchulis cases process was served within the state but beyond the boundaries of the district where suit was filed. All of these cases were decided prior to the adoption of the Rules of Civil Procedure, and since process here was served within the boundaries of the state, pursuant to Rule 4(f) Rules of Civil Procedure, none of those cases can support the asserted proposition that process on petitioner in this case was not valid under that rule.

Stonite Prod. Co. v. Melvin Lloyd Co., 315 U. S. 561, 86 L. Ed. 1027; **Sperry Prod. Inc., v. Association of American Railroads**, 132 Fed. (2d) 408, and **Contracting Division A. C. Horne Corp. v. New York Life Ins. Co.**, 113 Fed. (2d) 864 all presented questions of venue in patent cases. There is a special statute covering the venue of patent cases and the holding in those cases merely was that the suits necessarily had to be brought in accordance with that statute. They have no application here.

The case of **London v. N. & W. Railroad Co.**, 111 Fed. (2d) 127 is not in point because there the suit was brought in the Eastern District of Virginia against a Virginia corporation which had its principal office in the Western District of Virginia. Since the corporation was an inhabitant of the Western District it could not, over its objection, be sued in any other district of the State. The case is quite different from that at bar, because here the suit was brought by the plaintiff in the district of his residence against the defendant, an inhabitant of Delaware.

IV.

Under point number IV (reasons IV and V as stated in the petition) petitioner seeks to have this court overturn the finding of the District Court to the effect that respondent was a citizen of the Northern District of Mississippi.

This court will not grant writs of certiorari to

review the evidence or to discuss specific facts. **General Talking Pictures Corp. v. Western Electric Co.**, 304 U. S. 175, 82 L. Ed. 1273, 58 S. Ct. 848; **U. S. v. Johnston**, 268 U. S. 220, 69 L. Ed. 925, 45 S. Ct. 497; **Southern Power Co. v. North Carolina Public Service Co.**, 263 U. S. 508, 68 L. Ed. 413, 44 S. Ct. 164.

Petitioner did not except to the District Court's finding that respondent was a resident of the Northern District of Mississippi, and, therefore, on petition for certiorari the finding thus made controls. **Hollenbeck v. Leinert**, 295 U. S. 116, 79 L. Ed. 1339, 55 S. Ct. 687.

Moreover, the holding of the District Court, as affirmed by the Circuit Court of Appeals, is in accord with the applicable decisions of this court and with the applicable statute and decisions of the Supreme Court of Mississippi. **Morris v. Gilmer**, 129 U. S. 315, 32 L. Ed. 690, 9 S. Ct. 289; **Dist. of Columbia v. Murphy**, 314 U. S. 441, 86 L. Ed. 329; **McHenry v. State**, 119 Miss. 289, 80 So. 765; **Clay v. Clay**, 134 Miss. 658, 90 So. 181; **Bilbo v. Bilbo**, 180 Miss. 536, 177 So. 722; **Smith v. Dear** (Miss.) 16 So. (2d) 33, Miss. Code 1942 Sec. 4055 (see Appendix B for full text).

CONCLUSION

For the reasons herein stated it is, therefore, respectfully submitted that the petition for writ of certiorari should be denied.

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APPENDIX "A"

Miss Code 1942—SEC. 5319. RESIDENT AGENT: HOW DESIGNATED.

"Every foreign corporation doing business in the State of Mississippi, whether it has been domesticated or simply authorized to do business within the state of Mississippi, shall file a written power of attorney designating the secretary of state or in lieu thereof an agent as above provided in this section, upon whom service of process may be had in the event of any suit against said corporation; and any foreign corporation doing business in the state of Mississippi shall file such written power of attorney before it shall be domesticated or authorized to do business in this state, and the secretary of state shall be allowed such fees therefor as is (sic) herein provided for designating resident agents. Any foreign corporation failing to comply with the above provisions shall not be permitted to bring or maintain any action or suit in any of the courts of this state."

APPENDIX "B"

Miss. Code 1942—"SEC. 4055. STATE OFFICERS —LEGAL RESIDENCE OF, FIXED.—All public officers of this state, who are required to, or who for official reasons, remove from the county of their actual household and residence to another county of this state for the purpose of performing the duties of their office shall be deemed in all respect to be householders and residents of the county from which they so remove unless such officer elects to become an actual householder and resident of the county to which he removed for official causes."